

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate
Implementing a Decoupling Mechanism for
Hawaiian Electric Company, Inc., Hawaii
Electric Light Company, Inc., and Maui
Electric Company, Limited

DOCKET NO. 2008-0274

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OPENING BRIEF OF BLUE PLANET FOUNDATION

AND

CERTIFICATE OF SERVICE

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OPENING BRIEF OF BLUE PLANET FOUNDATION

Blue Planet Foundation (“Blue Planet”), by and through its attorneys Schlack Ito Lockwood Piper & Elkind, hereby respectfully submits its Opening Brief in this proceeding.¹

I. ISSUE I: “Will Decoupling Help Achieve Hawaii's Objectives?”

Blue Planet supports the adoption of sales decoupling with a Revenue Adjustment Mechanism (“RAM”) (together, “decoupling mechanism”) in this proceeding that meaningfully and effectively aids in the achievement of Hawaii’s energy objectives. Blue Planet respectfully submits that the Commission’s decision in this proceeding should be guided by its evaluation of the extent to which the decoupling mechanism helps to achieve three major Hawaii energy objectives: (1) achievement of Renewable Portfolio Standards; (2) the rapid adoption of renewable energy and increased energy efficiency; and (3) increased public awareness and

¹ This Opening Brief addresses the six issues set forth in the Commission’s Order Establishing Hearing Procedures filed June 16, 2009 (“Order”). The Order states that the issues identified in the Commission’s January 21, 2009 Order Approving, With Modifications Stipulated Procedural Order Filed on December 26, 2008 are replaced with six issues as set forth in the Order. *Id.* at 7. This Opening Brief is timely filed pursuant to the Commission’s August 7, 2009 letter to the parties. *Id.* at 3.

support for the decoupling mechanism, related Hawaii energy objectives, and Hawaii's swift transition to a clean energy economy.² Each of these is discussed in turn.

A. The Decoupling Mechanism Should Aid Achievement of Renewable Portfolio Standards.

The utilities' statutory requirement to acquire specific percentages of electrical energy from renewable energy and energy efficiency, or Renewable Portfolio Standards ("RPS"), constitutes one of the principal energy objectives for the State of Hawaii.³ The Commission should adopt a decoupling mechanism that meaningfully and effectively aids the utilities in achieving the RPS, and should require a performance incentive mechanism to ensure the RPS is met and to build public awareness and support for achievement of the RPS.

Under Part V of Chapter 269, Hawaii Revised Statutes ("Hawaii RPS law"), "renewable portfolio standard" means the percentage of electrical energy sales represented by renewable electrical energy. The term "renewable electrical energy," as recently amended by Act 155,⁴ means "electrical energy generated using renewable energy as the source" and also "electrical energy savings."⁵ The Hawaii RPS law requires each utility company that sells electricity in the state to establish a renewable portfolio standard of ten percent of its net electricity sales by December 31, 2010; fifteen percent of its sales by December 31, 2015; twenty-five percent of its sales by 2020; and forty percent of its sales by 2030. Prior to January

² Blue Planet acknowledges that maintaining and protecting the HECO Companies' financial integrity, to support the HECO Companies' efforts to achieve Hawaii's energy objectives, is an equally important objective of the decoupling mechanism. Unless otherwise noted, it is assumed the decoupling mechanism adopted in this proceeding will, generally speaking, maintain and protect the HECO Companies' financial integrity. Whether and to what extent the decoupling mechanism adopted in this proceeding will achieve Hawaii's energy objectives, however, is unclear. Thus, the three identified Hawaii energy objectives are appropriate criteria for evaluating the decoupling mechanism in this proceeding.

³ See Haw. Rev. Stat. ch. 269, Part V, *et seq.*

⁴ 2009 Haw. Sess. Laws, Act 155 § 1; H.B. 1464, 25th Leg. (Haw. 2009).

⁵ The latter may be brought about by the use of renewable displacement or offset technologies such as solar water heating, seawater air conditioning for district cooling, and customer-sited renewable energy systems, or by the use of energy efficiency technologies, including heat pump water heating, ratepayer-funded energy efficiency programs, and recycled waste heat from co-generation and combined heat and power systems. 2009 Haw. Sess. Laws, Act 155 § 2.

1, 2015, at least fifty percent of the RPS shall be met by “electrical energy generated using renewable energy as the source.” Beginning January 1, 2015, however, “electrical energy savings” shall not count toward RPS and the entire RPS must be met by electrical generation from renewable energy sources.⁶

If the Commission determines after a hearing that an electric utility company failed to meet the RPS, the utility shall be subject to a penalty of \$20 for each megawatt hour the utility falls short of the RPS.⁷ The Commission may, however, in its discretion waive any applicable penalties if it determines the electric utility company is unable to meet the RPS due to events or circumstances “beyond the usual control” of the utility. Haw. Rev. Stat. § 269-92(c). Such events or circumstances include the failure of renewable energy producers to meet contractual obligations, lapsing of renewable energy tax credits, the inability to obtain “cost-effective” renewable electrical energy, and the inability of renewable energy development projects to obtain permits or land use approvals. *Id.* at § 269-92(d).

It is unclear whether and to what extent the Joint Decoupling Proposal⁸ is likely to aid the HECO Companies complying with the requirements of the Hawaii RPS law because the Joint Decoupling Proposal lacks a performance incentive mechanism.

B. The Decoupling Mechanism Should Meaningfully and Effectively Promote the Rapid Adoption of Renewable Energy and Increased Energy Efficiency.

In addition to aiding the HECO Companies in complying with the Hawaii RPS law, the decoupling mechanism should more generally support efforts to promote the rapid

⁶ It should be noted that, like the Hawaii RPS law, the American Clean Energy and Security Act, 111th Congress, H.R. 2454 (June 26, 2009) sets forth a national renewable electricity standard that would require utilities to supply an increasing percentage of their load from a combination of energy-efficiency savings and renewable energy (6% in 2012, 9.5% in 2014, 13% in 2016, 16.5% in 2018, and 20% in 2020-2039), although state RPS laws are not preempted and can require an RPS that is more stringent than the federal program. *See id.* at § 861.

⁷ *Id.* See State of Hawaii Public Utilities Commission, “Order Relating to RPS Penalties” filed Dec. 19, 2008 at 1 (Docket No. 2007-0008) (establishing \$20/MWh penalty), available at <http://dms.puc.hawaii.gov/dms/>.

⁸ HECO Companies and Consumer Advocate, “Joint Proposal on Decoupling and Statement of Position of the HECO Companies and the Consumer Advocate” filed Mar. 30, 2009, as amended.

adoption of renewable energy and increased energy efficiency, as required by state law and consistent with the HECO Companies' commitments under the Hawaii Clean Energy Initiative⁹ ("HCEI") and Energy Agreement.¹⁰ Although the HCEI and Energy Agreement are not state law, they are potentially important sources of energy objectives for Hawaii.

For a decoupling mechanism to be consistent with the HCEI and Energy Agreement, it must meaningfully and effectively promote the rapid adoption of renewable energy. A key objective of the Energy Agreement, including decoupling from sales, is the rapid adoption of the maximum feasible amount of renewable energy in Hawaii. Section 28 of the Energy Agreement, "Decoupling from Sales," states that "remov[ing] the barriers for the utilities to pursue . . . customer-owned or third-party-owned renewable energy systems" is one of the purposes of adopting a decoupling mechanism. Energy Agreement at 32.

Hawaii law promotes and requires policy objectives consistent with the rapid adoption of renewable energy. The Constitution of the State of Hawaii, Article XI, "Conservation and Development of Resources," promotes the development of renewable energy:

For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State.

Id. (emphasis added). A significant number of Hawaii's energy-related statutes similarly require and promote the rapid adoption of the maximum feasible amount of renewable energy.¹¹

⁹ "Memorandum of Understanding Between the State of Hawaii and the U.S. Department of Energy" at 1.

¹⁰ "Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies" dated Oct. 20, 2008 ("Energy Agreement").

¹¹ See, e.g., Haw. Rev. Stat. § 46-19 (counties may participate in the development of alternative energy resources); Haw. Rev. Stat. § 46-19.4 (agencies shall provide priority handling and processing of county permits required for renewable energy projects); Haw. Rev. Stat. § 196-1 (finding an immediate need to formulate plans for the development and use of alternative energy sources); Haw. Rev. Stat. § 196-1.5 (agencies shall provide priority

Consistent with Hawaii law, the HCEI and Energy Agreement establish, support, and require policies consistent with the rapid adoption of renewable energy.

- The MOU estimates that “Hawaii can potentially meet between 60 and 70 percent of its future energy needs from clean, renewable energy sources.” *Id.* at 1 (emphasis added).
- The Energy Agreement parties commit to the goal of “70 percent clean, renewable energy for electricity and transportation by 2030[.]” *Id.* at 18 (emphasis added).
- The Energy Agreement affirms that “[t]he future of Hawaii requires that we move more decisively and irreversibly away from imported fossil fuel for electricity and transportation and towards indigenously produced renewable energy and an ethic of energy efficiency. *Id.* (emphasis added).
- The Energy Agreement parties agree to “implement feed-in tariffs as a method for accelerating the acquisition of renewable energy[.]” *Id.* at 17 (emphasis added).
- The parties commit to “accelerate the adoption of” distributed generation and distributed energy storage. *Id.* at 27 (emphasis added).
- The parties commit to integrate “the maximum attainable amount of wind energy on their systems.” *Id.* at 3 (emphasis added).
- The parties agree that the HECO Companies¹² “are responsible for expeditiously integrating customer-sited PV and CSP energy into the utility system[.]” *Id.* at 12 (emphasis added).
- The parties affirm that “[t]he very future of our land, our economy and our quality of life is at risk if we do not make this move and we do so for the future of Hawaii and of the generations to come.” *Id.* (emphasis added).

Thus, in accordance with Hawaii law and the Energy Agreement, the Commission should adopt the decoupling mechanism most likely to encourage the rapid adoption of renewable energy.

handling and processing of state permits required for renewable energy projects); Haw. Rev. Stat. § 196-41 (State of Hawaii Department of Land and Natural Resources and Department of Business, Economic Development and Tourism shall facilitate the private sector’s development of renewable energy projects); Haw. Rev. Stat. § 201-12 (DBEDT shall develop a state program for the efficient development of new or alternative sources of energy); Haw. Rev. Stat. 201-12.5 (establishing within DBEDT the position of renewable energy coordinator to facilitate renewable energy development); Haw. Rev. Stat. ch. 201N (establishing a renewable energy facility siting process); Haw. Rev. Stat. § 226-18 (it shall be State policy to “promote the use of renewable energy sources”); Haw. Rev. Stat. § 269-27.2 (promoting utilization of electricity generated from no fossil fuels); and Haw. Rev. Stat. ch. 269 Parts V and VI (establishing renewable portfolio standards and net energy metering).

¹² Hawaiian Electric Company, Inc.; Maui Electric Company, Limited; and Hawaii Electric Light Company, Inc.

Increased energy efficiency is an equally important Hawaii energy objective. The HECO Companies' January 30, 2009 Revenue Decoupling Proposal states that “[t]he purpose of the sales decoupling mechanism is to remove the linkage between utility sales and revenues, in order to encourage energy efficiency.” *Id.* at 2 (emphasis added). Section 28 of the Energy Agreement, “Decoupling from Sales,” likewise states that “remov[ing] the barriers for the utilities to pursue aggressive demand-response and load management programs” is one of the purposes of adopting a decoupling mechanism. Energy Agreement at 32 (emphasis added). Steps are to be taken to “reduce the demand for electricity and increase the efficiency” of energy used. *Id.* Section 12 of the Energy Agreement, “Energy Efficiency,” likewise states that it is the goal of the parties to “ensure that Hawaii achieves the maximum possible levels of energy efficiency as it represents the most effective use of resources possible, including conservation by not using resources at all.” *Id.* at 21. The HECO Companies and other parties to the Energy Agreement agree to a list of ten items in this section, including specific policies and programs, concerning increased energy efficiency. *Id.* at 21-22.

It is unclear whether and to what extent the Joint Decoupling Proposal is likely to aid the HECO Companies with the rapid adoption of renewable energy and increased energy efficiency because the Joint Decoupling Proposal lacks a performance incentive mechanism.

C. The Decoupling Mechanism Should Increase Public Awareness and Support for the Decoupling Mechanism, Related Hawaii Energy Objectives, and Hawaii’s Swift Transition to a Clean Energy Economy.

Blue Planet is a Hawaii public interest organization, with over 7,500 registered “Friends of Blue Planet,” dedicated to ending Hawaii’s dependence on imported fossil fuel by promoting the rapid adoption of renewable energy and increased energy efficiency. Blue Planet’s vision is one of diverse interests uniting around a common goal: Hawaii’s swift transition to a clean energy economy. Public awareness and support for this transition, crucial to

achieving Hawaii's ambitious energy policy objectives, appear to be steadily increasing. Blue Planet views public awareness and participation as critical to the achievement of its mission and the broader economic and environmental benefits of a clean energy economy, and therefore promotes energy efficiency and conservation through a variety of public outreach and education initiatives. The decoupling mechanism adopted in this proceeding must, to the extent possible, encourage and support increased public involvement in Hawaii's transition to a clean energy economy.

In doing so, implementation of the decoupling mechanism will accord with what may be described as new phase in Hawaii energy policy marked by recognition of Hawaii's potential role as a world leader in clean energy and increasing public awareness and support for ending Hawaii's dependence on imported fossil fuels. As Governor Lingle declared regarding the HCEI, "[o]ur islands' abundant natural sources of energy, combined with the considerable capabilities of the Department of Energy, will help Hawai'i lead America in utilizing clean, renewable energy technologies." State of Hawaii Office of the Governor, *Hawai'i and U.S. Department of Energy Partner to Make Hawai'i a "World Model" For Clean Energy Economy* (Jan. 28, 2008).¹³ Act 155 establishes the goal of Hawaii serving as a "national model,"¹⁴ and the Energy Agreement similarly provides that "[s]uccessfully developing Hawaii's energy economy will make the State a global model for achieving a sustainable, clean, flexible, and economically vibrant and independent energy future." *Id.* at 1.

It is unclear whether and to what extent the Joint Decoupling Proposal is likely to increase public awareness and support for the decoupling mechanism, related Hawaii energy

¹³ Available at <http://hawaii.gov/gov/news/releases/2008/hawaii-and-u.s.-department-of-energy-partner-to>.

¹⁴ 2009 Haw. Sess. Laws, Act 155 § 1.

objectives, and Hawaii's swift transition to a clean energy economy in part because the Joint Decoupling Proposal lacks a performance incentive mechanism.

As more fully explained in Blue Planet's response to PUC-IR-56 submitted August 24, 2009, the experience in Maine suggests decoupling may be successful in Hawaii to the extent the benefits of decoupling to the utilities are clearly linked to utility performance and achievement of Hawaii energy objectives. In general, strong public support exists for advancing Hawaii's clean energy goals and reducing the billions of dollars spent annually on imported fossil fuels. To the extent the public understands and views decoupling as an integral part of broad efforts to achieve Hawaii's energy objectives, and lower Hawaii's high energy costs over the long run, decoupling may avoid some of the difficulties encountered in Maine.

Although many other jurisdictions have successfully implemented decoupling,¹⁵ Maine's experience with revenue decoupling is generally considered a failure.¹⁶ In 1991, the Maine Public Utilities Commission adopted a revenue decoupling mechanism ("ERAM") for Central Maine Power ("CMP"). The allowed revenue was determined in a traditional rate case proceeding and adjusted annually based on changes in the utility's number of customers. Around the time ERAM was adopted, Maine experienced a major recession that resulted in lower sale levels and approximately \$52 million in revenue deferrals which CMP was entitled to recover from ratepayer surcharges. Because a very small amount of revenue deferrals was due to CMP's conservation efforts as compared to the recession, the public viewed ERAM as a mechanism that protected CMP against the economic impact of the recession instead of

¹⁵ For example, four utilities in California (Pacific Gas & Electric, Southern California Edison, San Diego Gas & Electric, and Pacific Power & Light) operate under decoupling. "Revenue Decoupling for Hawaiian Electric Companies," Pacific Economics Group, LLC (Feb. 3, 2009) ("PEG Report") at 22, attached as Attachment 1 to Letter from D. Matsuura (HECO) to Commission dated Feb. 24, 2009.

¹⁶ Maine Public Utilities Commission, *et al.*, "Report on Revenue Decoupling for Transmission & Distribution Utilities" at 10, available at <http://www.maine.gov/mpuc/legislative/archive/2006legislation/decouplingrptfinal.doc>.

providing CMP with energy efficiency and conservation incentives. The ERAM was terminated by agreement on November 30, 1993, because it failed to encourage CMP to promote energy efficiency and conservation and to protect ratepayers from high costs.¹⁷

Decoupling is generally promoted as a means of reducing utility disincentives toward energy efficiency and increased use of renewable energy. As noted above, the Energy Agreement, states that decoupling may facilitate Hawaii's transition to a clean energy future by removing barriers for the utilities to pursue aggressive demand-response and load management programs and customer-owned or third-party-owned renewable energy systems while giving the utilities an opportunity to achieve fair rates of return. Energy Agreement at 32. The Commission's Scoping Paper¹⁸ similarly affirms that decoupling is any mechanism that "breaks the link" between sales and earnings to eliminate the financial penalty incurred by utilities through cost-effective programs that reduce sales.¹⁹ The PEG Report submitted by the HECO Companies²⁰ and Consumer Advocate²¹ in support of their decoupling proposal concludes that "[d]ecoupling is a part of a package of incentives that can induce electric utilities to aggressively promote DSM [demand side management]."²² The report concludes decoupling "will help to align the interests of the HECO Companies with those of customers, state policymakers, and DSM and DG advocates."²³

Analysis of the Maine experience supports incorporation of a performance incentive mechanism in any decoupling mechanism adopted in this proceeding. Support for

¹⁷ *Id.*

¹⁸ "Decoupling Utility Profits from Sales: Design Issues and Options for the Hawaii Public Utilities Commission" (National Regulatory Research Institute, January 2009) ("Scoping Paper").

¹⁹ *Id.* at 2.

²⁰ Hawaiian Electric Company, Inc.; Maui Electric Company, Limited; and Hawaii Electric Light Company, Inc.

²¹ State of Hawaii Department of Commerce and Consumer Affairs Division of Consumer Advocacy ("Consumer Advocate").

²² "Revenue Decoupling for Hawaiian Electric Companies," Pacific Economics Group, LLC (Feb. 3, 2009) at 44, attached as Attachment 1 to Letter from D. Matsuura (HECO) to Commission dated Feb. 24, 2009.

²³ PEG Report at 53.

ERAM in Maine was weakened when some of the supporters of ERAM perceived the utility as not working toward achieving the energy policy goals.²⁴ These supporters, and members of the public, began to view ERAM as “a comfortable but unmerited cushion during hard economic times.”²⁵ To avoid this public perception, decoupling in Hawaii should include a relatively simple and clear link between the benefits of decoupling to the utilities and achievement of HCEI objectives, which can be effectively communicated to the public.²⁶

II. ISSUE II: “Decoupling Mechanics: How Well Does the HECO Companies’ Decoupling Design Achieve Hawaii’s Objectives?”

For purposes of its response to this issue, Blue Planet rests on its prior relevant submissions and statements in this proceeding and expressly reserves the right to further comment as may be appropriate.

III. ISSUE III: “Revenue Adjustment Mechanism: How Well Does it Achieve Hawaii’s Objectives?”

In general, Blue Planet supports adoption of the Joint Decoupling Proposal, subject to the following comments concerning RAM calculation, customer class allocation, and return on equity.

A. RAM Calculation

As more fully explained in Blue Planet’s responses to PUC-IR-57 through 60 filed on August 24, 2009, calculation of any inter-rate case revenue enhancement should reflect, as much as possible, the methodology used by the Commission in a traditional rate case to determine a particular component of an electric utility’s revenue requirements. Reducing the

²⁴ L. Hudson, S. Seguino, and R. Townsend, “Maine’s Electric Revenue Adjustment Mechanism: Why It Fizzled,” *The Electricity Journal* (Oct. 1995) at 81.

²⁵ *Id.*

²⁶ The PEG Report identifies Washington State as an example of successful use of decoupling mechanism to achieve energy policy goals. PEG Report at 40. Decoupling played a “critical role” in encouraging “dramatic improvements” and the achievement of the primary goal of Puget Sound Energy’s energy efficiency and conservation goals, resulting in the utility developing a distinguished reputation and becoming a national leader in the area of energy efficiency and conservation. *Id.*

frequency and number of rate case filings may allow the HECO Companies to direct institutional resources from such filings toward efforts to achieve Hawaii energy law and policy objectives, including HCEI and Energy Agreement commitments. Regulatory lag should be reduced to the extent possible. In that regard, it may be advantageous for the HECO Companies to accept rate relief in an amount slightly lower than required, if the relief is available in a more timely manner due to reduced regulatory lag.

The number and frequency of rate case filings may increase to the extent various revenue requirement components are excluded from any RAM adopted in this proceeding (e.g., exclusion of a portion of plant additions, exclusion of non-HCEI O&M expenses, etc.), and may decrease to the extent they are included in the RAM. If the Commission adopts a comprehensive RAM that incorporates all revenue requirement components sought by the HECO Companies, and the RAM effectively removes regulatory lag, the Commission should consider imposing a moratorium on future rate case filings (with appropriate provisions made for *force majeure* circumstances).

It is appropriate for Return on Equity (“ROE”) sharing, as proposed in the Joint Decoupling Proposal, to be incorporated into any RAM adopted by the Commission. Utility service quality standards should be incorporated as part of any RAM to insure that any measures taken by the HECO Companies to reduce O&M expense escalation and capital expenditures would not adversely affect customer service quality and reliability.

RAM rate relief should exclude operations and management (“O&M”) expenses and plant addition costs directly attributable to the HECO Companies efforts to achieve the requirements of Hawaii energy law and policy, including the HCEI and Energy Agreement. Cost recovery for HCEI-related items – O&M expenses and capital additions – should be made

through the Renewable Energy Infrastructure Program (“REIP”) and/or the Clean Energy Infrastructure Surcharge (“CEIS”) mechanisms. The RAM should be implemented to improve and then maintain the HECO Companies’ financial integrity. To facilitate Commission evaluation of whether and to what extent the RAM has contributed to the HECO Companies’ financial integrity, and is therefore an effective and valuable alternative to traditional ratemaking, RAM revenue requirements and HCEI-related revenue requirements should not be conjoined.

B. Customer Class Allocation Methods

With regard to customer classes, the methodology used to allocate sales decoupling and RAM adjustments to customer classes should reflect, to the extent possible, the methodology used by the Commission in a traditional rate case to allocate revenue requirements among customer classes. Sales decoupling and RAM rate adjustment mechanisms merely mechanize portions of the traditional rate case process. Simplifying assumptions should be utilized to approximate the rate case methodology in order to avoid the necessity of performing a detailed cost of service study as part of the annual sales decoupling and RAM filing. A uniform per KWh surcharge method should be used to allocate annual sales decoupling and RAM rate adjustments.

The sales decoupling rate adjustment should be determined on a total company basis, not on a customer class basis. Unless the rate is determined on a total company basis, the resulting rates to customers adjusted via sales decoupling may diverge from rates that would be revised in a general rate case had the revenue adjustment due to a sales level change been implemented through a rate case. This would occur because base rate revenues (non-fuel and purchased power) are determined on a total company basis first in a rate case, and subsequently allocated to customer classes based on their current relative, proportional energy use and the demand characteristics of each customer class. Stated differently, base revenue requirements are

not fixed for individual customer classes. They are fixed on a total company basis and then are allocated to customer classes by relative, proportional energy usage characteristics of each customer class. Therefore, if the energy use characteristics of a customer class change, then the proportion of the total base revenue requirements (non-fuel and purchased power) for which the customer class would be responsible would also change.

The HECO Companies propose to determine a sales decoupling rate adjustment separately for residential and non-residential customer categories and collect/refund the rate adjustment entirely within the respective customer classes. As such, HECO's decoupling proposal would not reflect changed customer class energy usage characteristics and thus how such sales change rate adjustments would be allocated to customer classes in a traditional rate case. The HECO Companies' proposal would allocate a rate increase due to class sales reduction solely to the customer class which experienced the sales reduction. This is contrary to the expected result of a rate case utilizing traditional cost of service methodology. Conversely, the HECO Companies' proposal would allocate a rate decrease due to class sales increase solely to the customer class which experienced a sales increase. Again, this is inconsistent with the expected result of a rate case utilizing traditional cost of service methodology.

The more appropriate method would be to determine the sales decoupling adjustment on a total company basis and then utilize a uniform per KWh surcharge to allocate the decoupling rate adjustment to customer classes. A uniform per KWh sales decoupling rate adjustment, determined on a total company basis, would closely approximate how base rate revenue requirements would be re-allocated in a rate case to various customer classes when a customer class' energy use characteristics have changed. It also would avoid "penalizing" a customer class that reduces its energy use.

Annual RAM rate adjustments should be determined on a total company basis and then allocated on current, not historic, energy usage characteristics. The HECO Companies' proposal is to use the allocation factors from the last rate case to apportion the RAM rate adjustment, which is determined on a total company basis, to customer classes. The HECO Companies' approach to the allocation of the RAM rate adjustment would approximate the results achieved in a rate case only if a customer class' energy usage characteristics does not deviate from its historical relative proportion of total system energy usage. If the relative energy usage proportion of a class changes, the HECO Companies' allocation method would deviate from that which would result from a rate case cost of service study.

Alternatively, and consistent with the preferred allocation method for sales decoupling, the RAM rate adjustment could be allocated to customer classes on the basis of a uniform per KWh surcharge. Although a uniform per KWh surcharge is to a large extent an energy allocation approach, it is typical for most utilities (including the HECO Companies) that energy and demand allocation prorations for major customer classes are very similar. Because of this fact, a uniform per KWh surcharge method is a reasonable proxy for demand allocation factors and thus could be used for both RAM and sales decoupling rate adjustments. It would also simplify the sales decoupling and RAM annual filing process.

The utilization of a uniform per KWh surcharge to allocate both RAM and sales decoupling rate adjustments to customer classes would also approximate the results that would be obtained from a rate case cost of service study involving changes in a customer class' relative proportion of total energy usage. The use of a uniform per KWh method to allocate costs is simple, straightforward and produces results that are consistent with those obtained from traditional cost of service studies utilized in a rate case.

C. Return on Equity

It would be appropriate for the Commission to reduce the authorized ROE for the HECO Companies to reflect that, compared to traditional ratemaking, sales decoupling and RAM effectively transfer a significant amount of risk from the HECO Companies to their customers. The RAM may also reduce or almost eliminate such risk. The HECO Companies' business risk and cost of equity capital will be reduced to the extent the Commission implements sales decoupling and a RAM. It would therefore be more appropriate to apply the lower cost of equity capital to the entire utility net rate base by applying the lower ROE in a rate case. The lower rate case ROE should also be applied in the RAM rate base adjustment formula.

Finally, it is noted that decoupling may entail a potential unintended consequence. If ROE is reduced, the HECO Companies' potential level of future profitability may be reduced correspondingly at the same time the utilities seek to achieve the HCEI and Energy Agreement objectives. In the event the Commission reduces the HECO Companies' ROE in a rate case to reflect the lower cost of equity capital, it may be appropriate for the HECO Companies to have recourse to a performance incentive mechanism as may be adopted by the Commission. Such a mechanism may allow the HECO Companies to restore and increase profits based upon their successful achievement the Hawaii clean energy law and policy objectives.

IV. ISSUE IV: "Revenue Per Customer Mechanism and Other Alternatives: How Well Do They Achieve Hawaii's Objectives?"

As more fully explained in Blue Planet's response to PUC-IR-61 filed August 24, 2008, the RAM proposed in the Joint Decoupling Proposal consists of both an O&M expense and rate base (plant) component. The latter component is designed to estimate the annual change in plant related revenue requirements for net plant additions. O&M expense increases are determined by a formula that is applied to all O&M expenses not subject to an automatic

adjustment clause (e.g., pension, Other Post Employment Benefits (“OPEB”), Integrated Resource Planning (“IRP”), etc.). Incorporating a RPC, either with or without reset, with any RAM may result in double recovery of certain revenue requirements items. In practice, it may be difficult to measure the exact amount of any such double recovery and reduce the RAM rate increase by a corresponding amount.

V. ISSUE V: “Energy Cost Adjustment Clause Amendment: What are Its Advantages and Disadvantages, In Terms of Hawaii's Objectives?”

As more fully explained in Blue Planet’s response to PUC-IR-62 and 63 filed August 24, 2009, a straight fuel cost pass-through may decouple utility earnings from operation reserve capacity decisions. The existing ECAC provides an incentive for the utilities to minimize operation reserve capacity. Adding intermittent renewable generation resources to utility systems, however, may require increased operating reserve capacity. As with resource commitment and curtailment decisions, ECAC with full pass-through may reduce the HECO Companies’ financial risk associated with providing sufficient operation reserves to accommodate intermittent renewable generation, thereby further supporting the rapid adoption of renewable energy.

Eliminating the fixed heat rate efficiency component of the ECAC mechanism may remove a disincentive for the HECO Companies to integrate additional renewable energy resources onto the grid. Adoption of the suggested heat rate performance band within which the HECO Companies would be financially at risk for changes in power plant heat rate may not, however, remove the renewable energy resource integration disincentive. The current ECAC mechanism may also allow the HECO Companies to retain a portion of the fuels cost savings from a decline in sales. Thus, absent a straight cost pass-through ECAC, the HECO Companies

may be overcompensated if a decoupling mechanism is implemented with the current ECAC and utility sales decline.

VI. ISSUE VI: “What Review Processes and Safeguards Should the Commission Consider?”

Blue Planet respectfully submits that the Commission should adopt a decoupling mechanism in this proceeding that includes a Performance Incentive Mechanism (“PIM”). Blue Planet favors the adoption of a PIM in conjunction with the Joint Decoupling Mechanism to aid in the achievement of Hawaii’s energy objectives.

A. A Performance Incentive Mechanism Is a Necessary Element of the RAM/HCEI *Quid Pro Quo*.

It is appropriate that the utilities offer a *quid pro quo*²⁷ benefit to the non-utility parties and ratepayers in exchange for the benefit they are to receive in the form of the RAM. It is undisputed that the RAM confers a significant financial benefit to the HECO Companies. In general, the benefit conferred by the RAM to the HECO Companies is to maintain and protect their financial integrity during the time that they seek to contribute toward the achievement of Hawaii’s energy objectives. More specifically, the RAM benefits the utilities by providing automatic revenue adjustments, avoidance of rate cases, and reduced regulatory lag. In exchange for the RAM, as a matter of general fairness and equity the HECO Companies should offer a benefit of equal value and importance, or *quid pro quo*, to the ratepayers and non-utility interested parties.

The HECO Companies have suggested that in exchange for the RAM they will comply with the Hawaii RPS law and seek to fulfill their commitments under the HCEI and Energy Agreement. They have repeatedly affirmed in this proceeding that decoupling is

²⁷ See Black’s Law Dictionary (7th Ed. 1999) at 1261 (defining *quid pro quo* as “[a] thing that is exchanged for another thing of more or less equal value; substitute[.]”).

designed to “maintain the Companies’ (sic) financial health and enable them to undertake the commitments made under the HCEI Agreement.” HECO Companies’ Responses to Questions in Appendix 2 of the NRRI Scoping Paper dated Feb. 20, 2009, App. 2, Question 2 at 2. The HECO Companies have suggested decoupling with RAM is necessary due to the “massive and substantial” commitments the companies have undertaken pursuant to the Energy Agreement. *See, e.g.*, HECO Companies’ Responses to the NRRI Scoping Paper Appendix 2 Questions dated Feb. 20, 2009 at Question 7, p. 1.

It is unclear whether the HECO Companies’ efforts to fulfill their obligations under the HCEI Agreement constitute a valid *quid pro quo* in exchange for the RAM. The overarching objective of the HCEI and Energy Agreement is the achievement of seventy percent clean energy in Hawaii by 2030. Act 155 has made that objective a legal requirement; the utilities are now required by law to achieve seventy percent clean energy by 2030. Thus, the HECO Companies’ fulfillment of their commitments under the HCEI and Energy Agreement are no longer voluntary, extraordinary undertakings insofar as those commitments are necessary to comply with state law. Similarly, the HCEI and Energy Agreement represent voluntary accords. It is unclear whether and to what extent parties to the HCEI and Energy Agreement, or third parties, have enforceable legal rights with regard to either accord. Nor is the Commission bound by the HCEI or Energy Agreement.

Assuming RAM is a valid *quid pro quo* for the HECO Companies’ compliance with the Hawaii RPS law and fulfillment of their HCEI and Energy Agreement commitments, it is reasonable and appropriate for the Commission to require the HECO Companies to document and demonstrate compliance accordingly by means of a PIM. A PIM may be especially

appropriate to the extent Hawaii's decoupling mechanism is not adopted in a "business as usual" environment. As the HECO Companies have stated in this proceeding:

Utilities in other jurisdictions have implemented decoupling in a "business as usual" operating environment amid declining sales; but never, to the HECO Companies' knowledge, have taken on the risks associated with the numerous massive and substantial projects similar to those called for in the HCEI Agreement at the same time.

HECO Companies' "Responses to Questions in Appendix 2 of the NRRI Scoping Paper" dated Feb. 20, 2009, App. 2, Question 7 at 1 (emphasis added). The extraordinary circumstances justifying the benefit of a RAM to the utilities apply with equal force to incorporation of a PIM for the benefit of ratepayers and other stakeholders.

B. A PIM Will Aid In Achievement of Hawaii's Energy Objectives.

In addition to being appropriate as a *quid pro quo*, a PIM may play a valuable role in achieving Hawaii's critical energy objectives.

1. Hawaii RPS law.

The Commission should require the decoupling mechanism to include a PIM because a PIM will aid the utilities in complying with the Hawaii RPS law. As the name indicates, a PIM will offer incentives to the utilities. Such incentives are consistent with the Hawaii RPS law, which authorizes the Commission to "provide incentives to encourage the electric utility companies to exceed their renewable portfolio standards or to meet their renewable portfolio standards ahead of time, or both." Haw. Rev. Stat. § 269-94. In addition, by providing incentives and penalties based upon a numerical formula, a PIM may encourage further precise quantification of efforts to achieve compliance with the Hawaii RPS law.

2. Rapid adoption of renewable energy and increased energy efficiency.

In addition to Hawaii RPS law compliance, a PIM may more generally aid in rapid adoption of renewable energy and increased energy efficiency. A PIM may include a relatively broad-based measure of achievement of Hawaii's energy objectives. Such a broad-based measure may stimulate and support a variety of efforts and measures related to renewable energy production and increased energy efficiency.

3. Increased public awareness and support for Hawaii's energy objectives.

A PIM can serve as a powerful tool to promote and encourage public awareness and support for the decoupling mechanism, the Hawaii RPS law, and related energy objectives found in the HCEI and Energy Agreement. To the extent the HECO Companies produce publicly-available documents and information pursuant to a PIM, Blue Planet would welcome the opportunity to partner with the utilities and employ such information in ongoing efforts to educate and build public support for renewable energy and energy efficiency in Hawaii.

The HECO Companies' objections to inclusion of a PIM in the decoupling mechanism are not convincing. *See* Joint Decoupling Proposal Exhibit E; HECO Companies Response to PUC-IR-30 filed May 18, 2009. The HECO Companies object to a PIM on the basis that they lack control over certain energy efficiency measures. *Id.* Although certain energy efficiency measures are to be administered by a third party, the HECO Companies retain control over load management programs and rate design (which is proven to encourage reduced energy consumption based on price elasticity). On balance, any lack of control over certain programs would not prevent implementation of a PIM. Although compliance with the Hawaii RPS law may be used to evaluate the HECO Companies' performance with regard to achievement of Hawaii's energy goals, absent a PIM the Hawaii RPS law provides no incentives. A PIM may

also be utilized to encourage additional and more precise quantification of progress or lack of progress in achieving RPS objectives.

The HECO Companies also suggest that a PIM may be properly excluded from the decoupling mechanism adopted in this proceeding because the Commission will at some point in the future conduct a further evaluation of the decoupling mechanism. The reasons supporting adoption of a PIM in conjunction with a future evaluation, however, would appear to apply with equal force at this time. The PIM is not intended as a corrective, but rather to support and ensure achievement of Hawaii's energy objectives from the outset, especially given the state's past failures to achieve articulated objectives.

The HECO Companies further suggest a PIM would be "inconsistent" with a decoupling mechanism, presumably because implementation of a PIM could result in the imposition of monetary penalties on the utilities, and one of the rationales for decoupling is to maintain and protect the utilities' financial integrity. Joint Decoupling Proposal Exhibit E at 3. This view assumes the RAM confers no benefit to the HECO Companies; as explained above, however, the RAM does confer general and specific financial benefits to the utilities.

Finally, in exchange for a decoupling mechanism that does not incorporate a PIM with incentives and penalties, the HECO Companies offer to submit a report in conjunction with its next cycle of rate cases. Joint Decoupling Proposal Exhibit E at 3. The report would include "the status of HCEI initiatives" such as net energy metering, feed-in tariff, and renewable generation. *Id.* Blue Planet respectfully submits that such reporting is made valuable to the extent it can be utilized to support achievement of Hawaii's energy objectives. A meaningful and effective way to utilize such analysis and reporting is in support of a PIM, which not only provides status information but links such information to actual performance.

C. Proposed “Clean Energy Utilization” PIM.

Consistent with foregoing, Blue Planet proposes a “Clean Energy Utilization” PIM (“CEU PIM”) to be incorporated in the decoupling mechanism adopted in this proceeding.²⁸ The CEU PIM measures the annual improvement in percent of total energy requirements supplied by clean energy resources according to the following basic formula:

$$\text{Clean Energy Utilization} / \text{Total Energy Requirements} = __\% \text{ CEU}$$

An increased percentage CEU reflects progress in achieving Hawaii’s energy objectives. CEU, measured in megawatt hours (“MWhs”), shall be comprised of (i) renewable generation, including generation from biofuels, regardless of utility and/or non-utility ownership of the generation units, (ii) renewable displacement or off-set technologies (as defined in Act 155), and (iii) energy efficiency technologies (as defined in Act 155). Total Energy Requirements (“TER”), shall be comprised of (i) utility electric sales, (ii) renewable displacement or off-set technologies (as defined in Act 155), and (iii) energy efficiency technologies (as defined in Act 155).

The CEU ‘numerator’ of the CEU PIM formula is appropriate insofar as it is consistent with the overarching Hawaii energy objective of seventy percent clean energy by 2030, and the TER ‘denominator’ is appropriate insofar as it approximates utility electric sales absent reduced sales due to behind-the-meter renewable energy displacement technologies and energy efficiency.

²⁸ Blue Planet submits that its CEU PIM is directly related to and builds upon the performance mechanisms proposed and discussed by the parties in this proceeding. For example, the State of Hawaii Department of Business, Economic Development and Tourism (“DBEDT”) and Blue Planet proposed or supported performance metrics tying decoupling revenue collection to net energy metering, feed-in tariff, and renewable generation. See DBEDT, “Opening Statement of Position on a Decoupling Mechanism for HECO/MECO/HELCO” filed Mar. 30, 2009 at 7; Blue Planet Foundation, “Blue Planet Foundation’s Response to the Division of Consumer Advocacy’s Information Requests dated April 6, 2009” filed April 15, 2009 at 1-2.

Table 1 illustrates clean energy utilization for HECO Companies for 2004-08 based upon available RPS status reports filed with the Commission. Clean energy utilization performance would be measured for the HECO Companies as a single entity, as this approach is consistent with the Hawaii RPS law and provides the utilities with greater flexibility to achieve performance goals. As shown in Table 1, clean energy utilization in for the HECO Companies has increased from 13.1% in 2006 to 16.6% in 2008.

Table 1: Hawaii Clean Energy Utilization Performance Measure

	HECO Companies				
	2004	2005*	2006	2007	2008
CEU Performance Measure					
Clean Energy Utilization	1,151,100		1,397,600	1,625,500	1,786,599
Total Energy Requirements	10,517,100		10,690,233	10,832,542	10,795,092
CEU	10.9%		13.1%	15.0%	16.6%

* Unable to locate data for 2005

The recent historical data for the various components of CEU and TER are illustrated in Table 2.

Table 2: Historical CEU and TER Data

	HECO Companies				
	2004	2005*	2006	2007	2008
Clean Energy Utilization (CEU)					
Renewable Generation	698,000		823,200	911,100	927,727
RE Displacement Technologies	77,100		98,400	116,400	127,981
Energy Efficiency Technologies	376,000		476,000	598,000	730,891
Total Clean Energy Utilization**	1,151,100		1,397,600	1,625,500	1,786,599
Total Energy Requirements (TER)					
Utility Electric Sales	10,064,000		10,115,833	10,118,142	9,936,220
RE Displacement Technologies	77,100		98,400	116,400	127,981
Energy Efficiency Technologies	376,000		476,000	598,000	730,891
Total Energy Requirements**	10,517,100		10,690,233	10,832,542	10,795,092

* Unable to locate data for 2005

** In MWh

The CEU PIM should be simple and easily understood by the Commission, the utilities, other stakeholders, and the public. It should encourage and support the HECO Companies in their efforts to accelerate clean energy implementation by providing an additional

financial incentive and reward. Table 3 illustrates recent trends of clean energy utilization in the HECO Companies' service territories along with the expected near-term performance improvements.

Table 3: Actual and Target Clean Energy Utilization

	Actual				Target		
	2006	2007	2008		2009	2010	2011
Clean Energy Utilization							
Performance Trend	13.1%	15.0%	16.6%		18.0%	19.0%	20.0%

CEU PIM performance would be measured based on the change in percentage utilization from the prior year. For example, the 2010 performance incentive award would be predicated upon the improvement in clean energy utilization from 2008 to 2009.

The CEU PIM would be symmetrical; i.e., it would seek to reward excellent improvement and penalize poor performance with respect to achieving Hawaii energy objectives. The incentive reward or penalty would be implemented by adjusting the annual RAM rate change upward or downward based upon the following illustrative performance matrix.

Table 4: RAM Rate Adjustment Per CEU PIM

Annual Change in Clean Energy Utilization Percentage	CEU PIM Adjustment to Annual RAM Rate Change (\$000)			Approximate Equivalent ROE Impact
	HECO	HELCO	MECO	
$\geq + 3.0\%$	\$7,000	\$2,000	\$2,000	0.50%
+ 2.0%	\$3,500	\$1,000	\$1,000	0.25%
+ 1.0%	\$0	\$0	\$0	0.00%
0.0%	(\$3,500)	(\$1,000)	(\$1,000)	-0.25%
$\leq - 1.0\%$	(\$7,000)	(\$2,000)	(\$2,000)	-0.50%

As reflected in Table 4, an increase of 1.0% annually is proposed as the baseline measurement. Any RAM rate adjustments pursuant to the CEU PIM would be implemented separately for each

of the HECO Companies pursuant to their individual RAM tariffs. The maximum upward/downward incentive adjustment to annual RAM rate change would be equivalent to approximately $\pm 0.5\%$ ROE change for each of the HECO Companies.

VII. LEGAL QUESTION

By its letter to the parties dated July 15, 2009, the Commission directed the parties to brief the following legal question:

Is it lawful for the Commission to impose a decoupling charge on customer categories that have reduced their consumption, while granting a decoupling credit to customer categories that have increased their consumption, given the state policy of inducing a reduction in consumption? Please also discuss the advantages and disadvantages of allocating the decoupling charge based on increases, rather than decreases, in a customer category's consumption.

Id.

Blue Planet is not aware of any Hawaii statutory authority barring the Commission from imposing a decoupling charge on customer categories that have reduced their consumption, while granting a decoupling credit to customer categories that have increased their consumption. Hawaii state policy promoting reduced electricity consumption may be inferred from Hawaii state law requiring increased energy efficiency, including the Hawaii RPS law. The Joint Decoupling Proposal appears likely to result in the imposition of a decoupling charge on customer categories that have reduced their consumption and granting a decoupling credit to customer categories that have increased their consumption. As a policy matter, it is noted that a

uniform per KWh surcharge method to allocate annual sales decoupling and RAM rate adjustments may avoid this problem, as more fully explained in section III.B, above.

DATED: Honolulu, Hawaii, September 8, 2009.



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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF HAWAII

In the Matter of

DOCKET NO. 2008-0274

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Investigate
Implementing a Decoupling Mechanism for
Hawaiian Electric Company, Inc., Hawaii
Electric Light Company, Inc., and Maui
Electric Company, Limited

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a copy of the foregoing document was
duly served upon the following individuals by placing a copy of same in the United States Mail,
postage prepaid, and/or by electronic service, as follows:

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